

Reading the 13th and the 18th sections of the Crown Lands Alienation Act together, I think it is clear that the "conditional purchaser under the former section must be considered—so far as the quantity of estate is concerned—

not as the purchaser of a limited estate or interest in this land, but as the purchaser of the whole estate or interest, that is, of the fee-simple. The whole phraseology of the 13th section indicates this. "The price" is fixed at twenty shillings per acre; a deposit of twenty-five per centum of the "purchase money" is to be paid—and if there be no other like application and deposit for the same land, the person tendering "shall be declared the conditional purchaser thereof at the price aforesaid." All these

It is, however, a purchase subject to certain conditions; and, by the 18th section, when these conditions are performed, the purchaser, or, if he has aliened in accordance

The provision for the payment of interest on the balance of the purchase money, also shows that a sale of the whole estate is intended.

lease is intended; for, after the expiration of three years, by payment of the interest, the "owner" may hold the land, and defer the payment of the balance of the purchase money, for ever; or he may alien or dispose of the land as he chooses, subject only to the conditions of the interest being duly paid.

is throughout treated, not only as having contracted to purchase, but as having actually purchased - if there be any difference between the two expressions - the *fo-simple* of the land. Whether this estate is an equitable estate, or an estate *sui generis*, and such as exists only under this statute, it is not necessary to determine. It certainly is not

Coming now to par. 5 of a 12 of the C. L. Occupation Act, it is manifest—if we are to give a meaning to all the words—that two classes of holders in fee-simple are contemplated, namely, holders of "purchased" lands,

and holders of "granted" lands. With respect to the latter class of holders there is no difficulty. But it is contended or suggested—if I understood the argument rightly—that the distinction intended is, by a reference to a regulation under the Orders in Council, between lands granted by favour of the Crown, and lands granted on demand or purchased.

granted—or, it may be, contracted to be granted—for a money consideration which has been paid. Whether that is the construction that ought to be put on the regulation referred to or not, it is not necessary to say. But I am of opinion that under the present Crown Lands Acts no such distinction exists; and that, if it ever did exist, it is abolished by these Acts. The only lands that can now be

Construing then par. 5, not according to the strictly technical meaning of the words, which may possibly be inapplicable, but, as I think we are bound to do, by considering the language used throughout both statutes, I

thing the broad distinction drawn is between lands for which a grant has been issued, and lands for which a grant has not been issued. The latter class may include lands conditionally sold and lands sold without conditions; but as purchasers of lands without conditions are entitled to a grant at once on payment of the purchase money, it would seem

useless to make such a distinction on their account. The distinction would therefore appear to be made chiefly, if not solely, for the benefit of conditional purchasers, who, being in possession under a purchase, or a contract for the purchase, of the fee simple, are "holders in fee simple" within the meaning of par. 6.

then, by par 12, the sale *conditional or otherwise* of any portion of such land cancels so much of the lease as relates not only to the land so sold, but to three times the area thereof adjoining thereto; and then such adjoining land comes at once under the operation of par. 5.

Sections 16 and 18 contain corresponding provisions with reference to the unsettled and second class settled districts. The clause at the end of the 18th section has, however, caused some difficulty; because it is there expressly declared that the adjoining area of which the lease is cancelled may be held by the new purchaser under pre-

The first answer to this objection is that par. twelve would be useless and unmeaning in declaring that the sale

conditional of land under lease should cancel the lease, if such cancelling were not for the benefit of the conditional purchaser. The next answer is that the clause is really unnecessary; but it appears to have been introduced in consequence of the general terms in which the 16th section is worded. Further, the clause declares that—whether the

shall be conditional or otherwise—all conditions and liabilities attached to pre-emptive leases in the first-class settled districts shall apply to pre-emptive leases under the 18th section; and as these conditions and liabilities are to be found only in par. 5 of s. 12, it would seem to be assumed that conditional purchasers, as well as purchasers without conditions, are equally entitled to the

In examining these Acts one consideration forcibly presents itself. Read together, as they must be, they are consistent throughout in placing the conditional purchaser in the same position as the purchaser without condition,—except as to the necessity, on the part of the former, of performing the conditions.

forming the conditions, they are both throughout on equal terms. Thus the 21st and 22nd sections of the Alienation Act enable both to make additional purchases of adjoining lands. The 16th and 18th sections of the Occupation Act enable both to obtain pre-emptive leases of land adjoining their purchases, in the unsettled and second-class

districts, whether such land may have been previously under lease or not. And by par. 5 and par. 12 of a 12, there being no reason why it should be otherwise, a similar privilege is conferred on both in the first-class settled districts.

One further question remains, namely, whether the sale conditional of land under pre-emptive lease to a conditional leaseholder is covered by the pre-emptive lease.

that purchaser takes away from his pre-consumptive sale is only the land sold but also three times its area. Whatever way this question is viewed there are difficulties attending it, some of which I confess I cannot settle to my own satisfaction. But on the whole I am inclined to think that the sale has not this effect. To hold otherwise would lead to results that *seem* unreasonable and full of inconveniences.

According to the opinion which I have thus expressed, the defendant is, upon the facts of the case, entitled to retain his verdict.

It has been intimated that it would be desirable to reduce to writing the judgments given in the case of Matev. Nugent at the conclusion of the argument in that case. I

This was an action of ejectment brought to recover 640 acres of land. At the trial, which took place before me at the Wages Wages Assizes in April last, the defendant,

The plaintiff put in a grant from the Crown, registered in the Lands Titles Office, and bearing date the 11th of January, 1867, and there rested his case.

The defendant then went into evidence, from which it appeared that on the 7th January, 1884, he selected 120 acres, as a conditional purchaser, under the Crown Lands Alienation Act, and paid the usual deposit of five shillings per acre—that he resided on the land so selected continuously down to the time of the trial, and expended a considerable sum of money in making improvements. It further

appeared that, on the 12th April, 1866, he made an "additional selection" of ninety acres, and paid the usual deposit of five shillings per acre. The defendant also stated that he made on both selections improvements to the value of £400. Receipts for both deposits, given by the Crown lands agent for the district, were proved. After the expira-

tion of three years from the date of his first selection, the defendant paid to the Government the interest on the balance of the purchase money within the time prescribed by the Act. It appeared, however, that he received a notice from the Government that his selections were cancelled; but on what ground, or by what authority the

The jury, in reply to a question put by me, found that the defendant had complied with all the conditions of the Act; which finding appeared to me at the time to be entirely in accordance with the evidence.

The motion was accordingly made and argued, and, after the argument, I concurred with the Chief Justice and Mr. Justice Hargrave in thinking that the verdict ought to be

In the first place, it is clear that a plaintiff cannot succeed in ejectment so long as the defendant retains the right of possession. But, upon the evidence, the defendant appeared to have been a conditional purchaser of 120 acres, under the 13th section of the Crown Lands Occupation

act, and subsequently of an additional selection of land by the jury. He also appeared as an expert witness for the State, and testified that the jury— to have performed, in reference to both selections, all the conditions required by the Act. At the trial no attempt was made to show, nor was it even suggested, that he had selected lands not open to selection. If such had been the case, it would have been an answer to the charge.

This being so, I was of opinion that the defendant, as a conditions purchaser, had a statutory right, under the Act of Parliament, to hold his land, as long as he continued to perform the conditions required by the Act—that this right commenced from the moment he was declared

the conditional purchaser, and had taken possession and—subject, always, to the performance of the conditions—was absolute and indefeasible again; all the world, including the Crown; and I was ware of no authority by which the Government could cancel such a purchase or sale.

and perfect title, and ought to prevail over an incomplete

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To Carriers.

Cart Horses.

BURT and CO. are instructed by Messrs. Davis, Alexander, and Co. of Goulburn, to sell by auction, at their Bazaar, TO-MORROW, Wednesday, at 11 o'clock.

2 teams, comprising 8 very superior cart horses, accustomed to go shaft and load, and work on mountain roads.

Also,
A pair well matched bays, suited for carriage work, and accustomed to run in single and double harness.

Drumhead Stallions.

TO-MORROW, Wednesday, at 11 o'clock.

BURT and CO. are instructed to sell by auction, TO-MORROW, Wednesday, at 11 o'clock.

The following draught stallions:-

GEORGE, a ch. cart stallion, 4 years, by South's

Young Captain, a gr. cart stallion, 4 years, by

Young Prince, a bay cart stallion, 3 years old, by

Young Captain, a gr. cart horse, 2 years old, own brother

to Young Prince, a bay cart stallion, 3 years old, by

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In the Insolvent Estate of R. Rowe and others.

M. R. H. VAUGHAN has received instructions from the Official Assignee to sell by auction, THIS DAY, 8th instant, at 11 o'clock, at his Rooms, 140, King-street East.

Carpenter's tools of trade, benches, timber, &c.
Household furniture, jewellery, clothing, and effects.

Sale by Auction.

THIS DAY.

At the Labour Bazaar.

ALEXANDER MOORE and CO. will sell

by auction, at the Mart, Labour Bazaar, Pitt-

street, at 11 o'clock, the stock-in-trade of a tobacconist, comprising:-

Silver-mounted meerschaum pipes
Tobacco, cigars, was vesica

Cigar cases, &c.
Perfumery, brushware

Alto, gold and silver watches, and jewellery
Writing-desks, workboxes

Concertinas, telescopes
Toy dinner and tea-sets, &c.

At the Residence, No. 42, Brisbane-street, near South Head Road.

Valuable Household Furniture and Effects.

Under and by virtue of Bill of Sale.

To Parties Purchasing, Furniture Dealers, and others.

M. R. JOHN SOLOMON has received instructions to sell by public auction, on the premises, No. 42, Brisbane-street, near South Head Road, on WEDNESDAY, September 9th, at 11 o'clock sharp, under and by virtue of bill of sale.

The whole of the household furniture and effects, consisting of:-

Splendid drawing-room suite, covered

Handsome pier glass, chairs, drawers

Dining, bed, &c. tables, chairs, sofas

Iron single and double bedsteads, and bedding

Elegant wardrobe, children's cots, washstands

Looking-glasses, brasses, carpets, toilet services

Dinner, breakfast, and tea services, plated-ware

Glassware, &c., &c., and

A large quantity of kitchen utensils.

Terms, cash.

On WEDNESDAY, the 9th instant, at 11 o'clock.

DENISON-STREET, KINGSTON, NEWTOWN ROAD.

By order of the Administrator of the Estate of the late Mr. J. S. Collins.

Superior HOUSEHOLD FURNITURE and Sundries.

M. R. ROBERT MURIEL has received instructions to sell by public auction, at the residence of the late Mr. J. B. Collins, Denison-street, Kingston, on WEDNESDAY, the 9th instant, at 11 o'clock precisely.

A quantity of superior household furniture and household requisites.

Terms, cash.

WEDNESDAY, September 9th, 1868.

SUPERB WATER-COLOURED DRAWINGS.

By R. S. Bond, Licentiate of the Royal Society of Arts, removed from Government House, Auckland, N.Z.

For Positive Sale, in one lot or separate.

To the Dilettanti, Lovers of Fine Arts, Artists, and the Public generally.

JOHN G. COHEN has received instructions to sell, at the Bank Auction Rooms, on WEDNESDAY, September 9th, 1868, at 11 o'clock precisely.

The following beautiful water-colour paintings, by R. S. Bond, London:

1. Wreck on the Coast of Conwy, N. Wales

2. Mill on the River

3. The Old Lodge

4. Drift Wood, wonderful production

5. A View of the River, Aberystwyth

6. Darnley Bridge, Aberystwyth

7. Salmon Trout

Terms, cash.

On TUESDAY, September 8th, at 11 o'clock.

AMERICAN KEROSINE LAMPWARE.

Now landing ex Henry, from New York.

Largest and Finest Assortment of Kerosene Lampware ever imported.

All especially selected for the Sydney market, and comprising all new and reasonable goods.

OBSEVE - WITHOUT THE SLIGHTEST RESERVE.

Highly important to Importers of Lampware, Country Buyers, Stockkeepers, Dealers, and others.

119 Packages Superior Lampware.

M. R. JOHN SOLOMON has been favoured with instructions from the importers to sell by public auction, at his Rooms, 309, George-street, THIS DAY, September 8th, commencing at 11 o'clock precisely.

110 packages American lampware, comprising:

Glass stand lamps, A burners and chimneys

Alabaster decorated ditto, ditto ditto

Cut and gilt, flint and alabaster, opal, blue, green, and ruby table lamps, B burners, with globes, &c.

Alabaster decorated ditto, ditto ditto

Kitchen, Boston, Swan, New York, Union, Hildreth, Shield, Hexagon, Nichols, Sandwich plain and decorated, flint, table lamps

Bright and tapered gasolene burners

Chain and lamp hanging lamps, B. and D. founts and burners

One and two light bracket and side lamps, with B. and D. founts and burners

E. H. B. D. Sandwick burners and collars

E. H. B. D. lamp shades

A. and B. Merrill shade holders

Paper and transparent shades and clasps

Ornament and globe shades, ground, oil, and engraved

20 packages E. H. B. D. lamp chimneys.

Terms, liberal, at sale.

THIS DAY, 8th September, at 11 o'clock.

Reasonable Drapery, Manchester Goods, Hosiery, Haberdashery, Clothing, &c.

To Warehousemen, Drapers, Country Storekeepers, Dealers, and others.

W. C. RUSH and CO. have received instructions from the importers to sell by auction, at their Rooms, 217, Pitt-street, on the above day, at 11 o'clock.

A large assortment of reasonable drapery, &c., comprising:

4-4 rough and dressed holland

6-4 alpaca, black and coloured

Coloured flannels, Scotch and Saxony flannels

Lisle and fancy light ground prints

Linen and cotton ticks

8-4, 9-4, 10-4, 11-4, 12-4 blankets

32, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, 92, 94, 96, 98, 100

White and grey calicoes

Light ground crinoline shirts

Heavy Scotch twill ditto, O.S.

Men's white shirts

Vegetarian and Byzantine shirts

Striped and fancy shirts

4-4, 5-4, 6-4, 7-4, 8-4, 9-4, 10-4, 11-4, 12-4 albambrs quilts

Hosiery, haberdashery

Felt hats, cloth caps, &c.

Terms, liberal, at sale.

For Positive Unreserved Sale.

THIS DAY, at 12 o'clock.

To Saddlers, Harness Makers, Dealers, and others.

2 Cases Gents' Hopskin Saddles.

W. C. RUSH and CO. have received instructions to sell by auction, at their Rooms, 217, Pitt-street, THIS DAY, at 12 o'clock.

Two cases, containing

24 gents' hopskin saddles.

Terms at sale.

THIS DAY, at 11 o'clock.

On account of whom it may concern.

Ex Dartmouth, — master, from London.

Grey Calicoes, White Shirtings.

Slightly damaged by sea-water.

W. C. RUSH and CO. will sell by auction, THIS DAY, at their Rooms, 217, Pitt-street, at 11 o'clock.

1181 — 47 pieces 36 inch grey, 1447 yards

4 ditto ditto, 2004 yards

1084 — 3 pieces white sheeting, 242 yards.

Without reserve.

Terms, cash.

Dispersy, Spring Goods, Hosiery, Clothing, &c., &c.

Now landing ex Martha Birnie.

THURSDAY, 10th,

FRIDAY, 11th,

at 11 o'clock each day.

MESSRS. CHAS. MOORE and CO. have received instructions to sell by auction, at their Rooms, Pitt-street, THIS DAY, 8th.

Several consignments spring drap

